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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,456	02/26/2004	Alexandre A. N. Baptista	37469:8013.US01	5171
22918	7590	03/15/2006	EXAMINER	
PERKINS COIE LLP			HARMON, CHRISTOPHER R	
P.O. BOX 2168			ART UNIT	
MENLO PARK, CA 94026			PAPER NUMBER	

3721

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/789,456

Applicant(s)

BAPTISTA, ALEXANDRE A. N.

Examiner

Christopher R. Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) 38-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10-17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) 5-9 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/14/04; 6/28/04;
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-21 in the reply filed on 1/5/06 is acknowledged. The traversal is on the ground(s) that all claims are directed towards a single species. This is not found persuasive because the inventions have different modes of operation; see restriction requirement paragraph 2.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 38-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 12-15 and 19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13 and 15-17 of copending Application No. 10/789,451. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference is the claimed vacuum latch mechanism. It would have been obvious to one of ordinary skill in the art to include a vacuum latch for maintaining a coupling of the lid to base as shown by Kristen (US 6,256,968).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 4, 10-12, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kristen (US 6,256,968).

Kristen discloses a vacuum packaging appliance for evacuating a container 22, said vacuum packaging appliance comprising: a base with trough 30 defining an upper support surface adapted to receive an open end of said container 22; a lid 26 operatively associated with said base 30, said lid 26 and said base/trough 30 defining a vacuum chamber 48 there between to receive said open end of said container 22; at least one gasket 42 surrounding said vacuum chamber for directly engaging said

container 22 such that said open end of said container 22 is operatively associated with said vacuum chamber 48; a vacuum source 52 operatively associated with said vacuum chamber for selectively evacuating said vacuum chamber 48 and said operatively associated container 22; and a vacuum latch 34 for restraining movement of said base relative to said lid and insures the vacuum integrity of the chamber 48 when said vacuum packaging appliance is in use; see figures 2 and 4. Latches 34 are mounted in chambers in base 24 and rotatable to contact hooks 32 to force lid 26 into a locked/sealed position; see figure 2. Heat sealing mechanism 62 seals the evacuated container 22.

Regarding claim 12, trough 30 is considered removable as it is a separate element from base 24.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968).

Regarding claims 3 and 17, Kristen does not directly disclose forming latch chambers in the lid, however it would have been obvious to one of ordinary skill in the art to reverse the latch 34 and hook 32 mechanisms of Kristen and thereby provide latch chambers in the lid 26. Note that it has been held that a mere reversal of the

essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 21, Kristen discloses side channel vacuum latches 34 located on opposing ends of the vacuum chamber 48. Kristen does not directly disclose spring mounting the latches. The rotating of latch 34 is performed by stepper motor 39 and when the evacuation process is over the lid is automatically released/opened. The examiner takes OFFICIAL NOTICE that spring mounted biased cams/latches are well known in the art and it would have been obvious to one of ordinary skill in the art to use a spring mounted latch in order to automatically release the hooks 32 and thus allow opening of lid 26.

9. Claims 13-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968) in view of Bullard (US 5,515,773).

Kristen does not directly disclose trough 30 removable via tongue and groove sliding capability or a handle structure (hidden or otherwise), however Bullard solves a similar unwanted condensation problem from a steam chamber with collection trough 40 comprising a handle hidden from view behind a door structure in the base; see figure 2. The trough is removed by a tongue and groove sliding construction and then cleaned of contaminants.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the removable trough as taught by Bullard in the invention to Kristen in order to easily empty any undesirable residue/condensation. Note

that the language of claim 15 "can be hidden" only requires the trough to be capable of being hidden behind a door.

Regarding claim 19, the vacuum latch chamber is considered operatively associated with the vacuum source as the rotation of latch 34 within (and bringing hook 32 into chamber) is a preliminary step associated with the actuation of the vacuum source.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968) in view of Bullard (US 5,515,773) as applied to claims supra, and further in view of OFFICIAL NOTICE.

See above treatment of claim 21 (paragraph 8) regarding spring mounting the latches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a spring mounted latch in order to automatically release the hooks 32 and thus allow opening of lid 26.

#### ***Allowable Subject Matter***

11. Claims 5-9 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

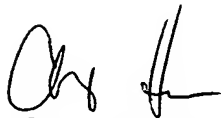
#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Chris Harmon', is positioned above the printed name.

Chris Harmon  
Patent Examiner